

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JESSICA M. BROWN,

Plaintiff,

v.

THOMAS,

Defendant.

Case No. 2:24-cv-00738-MMD-MDC

ORDER

Plaintiff Jessica M. Brown brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that she claims she suffered while incarcerated at Florence McClure Women’s Correctional Center. (ECF No. 1-1.) On May 3, 2024, this Court ordered Brown to file a fully complete application to proceed *in forma pauperis* or pay the full \$405 filing fee on or before June 5, 2024. (ECF No. 3.) The Court warned Brown that the action could be dismissed if she failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that deadline. (*Id.* at 2.) That deadline expired and Brown did not file a fully complete application to proceed *in forma pauperis*, pay the full \$405 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep

1 court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)
2 (dismissal for failure to comply with court order). In determining whether to dismiss an
3 action on one of these grounds, the Court must consider: (1) the public's interest in
4 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk
5 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
6 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*
7 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

8 The first two factors, the public's interest in expeditiously resolving this litigation
9 and the Court's interest in managing its docket, weigh in favor of dismissal of Brown's
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing
12 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.


15 The fifth factor requires the Court to consider whether less drastic alternatives can
16 be used to correct the party's failure that brought about the Court's need to consider
17 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
18 that considering less drastic alternatives *before* the party has disobeyed a court order
19 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
20 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
21 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
22 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
23 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
24 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
25 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
26 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
27 unless Brown either files a fully complete application to proceed *in forma pauperis* or pays
28 the \$405 filing fee for a civil action, the only alternative is to enter a second order setting

1 another deadline. But the reality of repeating an ignored order is that it often only delays
2 the inevitable and squanders the Court's finite resources. The circumstances here do not
3 indicate that this case will be an exception: there is no hint that Brown needs additional
4 time or evidence that she did not receive the Court's order. Setting another deadline is
5 not a meaningful alternative given these circumstances. So the fifth factor favors
6 dismissal.

7 **II. CONCLUSION**

8 Having thoroughly considered these dismissal factors, the Court finds that they
9 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
10 prejudice based on Brown's failure to file a fully complete application to proceed *in forma*
11 *pauperis* or pay the full \$405 filing fee in compliance with this Court's May 3, 2024, order.
12 The Clerk of Court is directed to enter judgment accordingly and close this case. No other
13 documents may be filed in this now-closed case. If Brown wishes to pursue her claims,
14 she must file a complaint in a new case.

15 DATED THIS 14th day of June 2024.

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20 MIRANDA M. DU
21 CHIEF UNITED STATES DISTRICT JUDGE
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